

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 977 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Nos. 1 to 5 No

SHAILESHKUMAR MADHUVANDAS CHOKSHI

Versus

STATE OF GUJARAT

Appearance:

MR UM SHASTRI for Petitioner
MS.SIDDHI TALATI ASSISTANT PUBLIC PROSECUTOR
for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 24/11/98

ORAL JUDGEMENT

This writ petition under Article 226 of the Constitution of India has been filed praying for a writ of certiorari quashing the order of the Sub Divisional Magistrate, Godhra passed on 13.8.1998, Annexure "B" under section 57 clause (c) of the Bombay Police Act and also the order of the Appellate Authority dated 30.9.1998

contained in Annexure "D".

The brief facts are that a show cause notice under section 57(c) of the Bombay Police Act, Annexure "A" was issued to the petitioner to show cause why he should not be exterted in view of registration of three cases under sections 4 and 5 of the Gambling Act. The petitioner appeared and filed reply to the show cause notice and also adduced evidence. The Sub Divisional Magistrate, Godhra after considering the material passed an order of extertment, Annexure "B" against the petitioner for a period of two years. An appeal was preferred which was dismissed.

The only contention raised by the learned Counsel for the petitioner has been that both the orders under challenge are patently illegal, and in violation of section 57(c) of the Bombay Police Act.

Section 57(c) in short provides that if a person has been convicted thrice or more of an offence under section 122 or 124 of the Bombay Police Act, the authorities mentioned in this sub-section may pass extertment order as provided thereunder. It is, therefore, obvious from the opening sentence of section 57 that unless a person has been convicted thrice or more of an offence under section 122 or 124 of the Bombay Police Act, no order for extertment can be passed. Two orders under challenge clearly show that the two authorities did not apply their mind to the essential ingredients of section 57(c) of the Bombay Police Act. The Sub Divisional Magistrate, Godhra in the concluding portion of his order specifically observed that in the first case under sections 4 and 5 of the Gambling Act, the petitioner was acquitted because the offence could not be proved. In the second case under the same sections registered on 11.6.1996, the matter is pending before the Court. In the third case under the same sections registered on 4.1.1998, the matter is under police investigation. Thus, from these observations of the concerned Sub Divisional Magistrate, it is obvious that in no case the petitioner has been convicted what to say of three or more cases as required under section 57(c) of the Bombay Police Act.

The Sub Divisional Magistrate, Godhra as well as the Appellate Authority were swayed away by irrelevant considerations that the petitioner is a quarrel-some person and the police and the persons of the locality are fed-up with his activities. These are no grounds on which the order for extertment could be passed within the

ambit of section 57(c) of the Bombay Police Act. The two orders, are therefore, patently illegal and are required to be quashed . The writ petition therefore succeeds and is allowed. The impugned orders as contained in Annexure "B" dated 13.8.1998 and further contained in Annexure "D" dated 30.9.1998 are hereby quashed. The interim order dated 15.10.1998 is discharged.

Sd/-
(D.C.Srivastava, J)

m.m.bhatt